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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION N
10/726,431	12/03/2003	Don R. Mydland	03-0038	5818
30550	7590	10/01/2004	EXAMINER	
BILL & MARY LOU INC. 101 LOMBARD STREET #510 W SAN FRANCISCO, CA 94111			WONG, STEVEN B	
			ART UNIT	PAPER NUMBER
			3711	

DATE MAILED: 10/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/726,431	Applicant(s) MYDLAND, DON R.	
	Examiner Steven Wong	Art Unit 3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10-17 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 18 and 19 is/are rejected.
- 7) ☒ Claim(s) 3-9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>dec 3 2003</u> . | 6) <input type="checkbox"/> Other: ____  |

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 19 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 19, step c is indefinite as it refers to the heel of the hand on the ball, however, the claim fails to set forth the location of the ball in the device.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Bressie (4,660,837). Regarding claim 1, Bressie discloses a golf tee setting device comprising a means for inserting a golf tee in the device (22), a means for retaining the golf tee in the device (36), a means for selecting a tee head height above ground (54), a means for fitting a golf ball (16), a means for gripping the device (20) and a means for releasing the golf ball from the device (40). See column 4, lines 56-60 stating that the friction force with the ground and the posts (40, 42) cause the tee to be released from the device.

Regarding claim 2, Bressie discloses a cylindrical body for the device with a golf tee chamber opening in the bottom of the device.

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5. Claims 18 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Lynch (3,312,468). Regarding claim 18, Lynch discloses a golf tee setter comprising a palm engaging portion (3), finger engaging portions (6) and a golf tee retaining means (8). The user grips the tee-setting device in a hand with the device between two fingers and the palm portion in the palm. Force is applied to the device by the fingers and palm to allow for retention of the tee in the device. The user reapplies force with the fingers and palm to allow for removal of the device from the tee. Note column 2, lines 27-32 stating that the tee setting device is adjusted to the desired tee head height above the ground.

Regarding claim 19, Lynch teaches placing a golf ball on the tee setting device. The device of Lynch is inherently used with the palm and two fingers applying force to the device to allow insertion of the tee in device, insertion of the tee in the ground and removal of the device from the tee.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murdock, Jr. (3,671,037) in view of Bressie (4,660,837). Regarding claim 1, Murdock, Jr. discloses a means for inserting a golf tee in the device (16), a means for retaining a golf tee head in the device (38), a means for selecting a tee head height above the ground (50, 52), a means for

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gripping the device (32) and a means for releasing the golf tee from the device (84). However, Murdock, Jr. lacks the teaching for the means for fitting a golf ball to the device.

Bressie teaches that providing the concave inwardly dished surface (16) for receiving the golf ball aids in the insertion of the tee in the ground. It would have been obvious to one of ordinary skill in the art to form the handle (32) of Murdock, Jr. with a concave dished surface in order to fit a golf ball for aiding in the insertion of the tee in the ground.

Regarding claim 2, it would have been obvious to one of ordinary skill in the art to form the device of Murdock, Jr. with generally circular sides in order to eliminate any sharp corners and facilitate carrying of the device in one's pocket or golf bag.

***Allowable Subject Matter***

8. Claims 3-17 appear to read over the prior art of record.


***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Wong whose telephone number is 703-308-3135. The examiner can normally be reached on Monday through Friday 7am-3:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on 703-308-1513. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Steven Wong  
Primary Examiner  
Art Unit 3711

SBW  
September 29, 2004